



Virginia
Regulatory
Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Alcoholic Beverage Control Board
VAC Chapter Number:	3 VAC 5-60
Regulation Title:	Manufacturers and Wholesalers Operations
Action Title:	Business Entertainment and Gifts by Mixed Beverage Solicitors
Date:	11/19/01

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Enter Statement Here

The Alcoholic Beverage Control Board proposes to amend 3 VAC 5-60-80, which generally regulates the activities of individuals who hold permits to solicit mixed beverage licensees on behalf of distilled spirits manufacturers. The contemplated amendments would increase from \$5.00 to \$10.00 the maximum wholesale value of novelty and specialty items bearing spirits advertising which may be given away, and to allow permittees to provide routine business to mixed beverage licensees subject to the same conditions and limitations that apply to wholesalers and manufacturers.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Enter Statement Here

§§ 4.1-103 and 4.1-111 of the Code of Virginia authorize the Board to promulgate regulations which it deems necessary to carry out the provisions of the Alcoholic Beverage Control Act. § 4.1-111 also specifically requires the Board to promulgate regulations which maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers. 3 VAC 5-60-80 is designed to carry out this requirement by limiting the types of inducements, in the nature of goods or services, that may be offered by representatives of distilled spirits manufacturers to retailers. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Enter Statement Here

The proposed amendments will protect the health, safety or welfare of citizens by allowing alcoholic beverage manufacturers or wholesalers a reasonable ability to promote their products, while not permitting undue influence on retailers from excessive gifts. The maximum wholesale value of novelty and specialty items allowed under the regulation has not changed since 19

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action’s changes.

Enter Statement Here

The Board proposes amending 3 VAC 5-60-80 by increasing the maximum wholesale value of novelty and specialty items bearing spirits advertising from the present \$5.00 to \$10.00. The Board also expects to amend the section to allow permittees to provide retail licensees routine business entertainment in the same manner and subject to the same conditions and limitations that apply to wholesalers and manufacturers.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Enter Statement Here

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency’s best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Enter Statement Here

There is no projected fiscal impact to the state, localities, or affected businesses, which include alcoholic beverage manufacturers, wholesalers, and retailers. The amended regulation does not mandate any additional expenditures on the part of industry, and existing enforcement mechanisms are adequate to enforce the regulations as amended.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This

statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Enter Statement Here

The Board proposes amending 3 VAC 5-60-80 by increasing the maximum wholesale value of novelty and specialty items bearing spirits advertising spirits advertising from the present \$5.00 to \$10.00, in subsections D1 and D3d. The Board also proposes to amend subsection E3 by deleting the current language following “except”, and adding language to allow permittees to provide retail licensees routine business entertainment in the same manner and subject to the same conditions and limitations that apply to wholesalers and manufacturers under 3 VAC 5-30-70.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Enter Statement Here

Alternatives which were considered include removing restrictions altogether and the taking of no action. Both were rejected. The Board is unable to discern a current policy reason to treat mixed beverage solicitors differently from wine and beer distributors. The maximum allowed wholesale value for novelty and specialty items has not increased since 1991, although costs of such items have risen. Removing all restrictions would be inconsistent with the Board’s mandate to maintain reasonable separation of the manufacturing, wholesale, and retail tiers of the alcoholic beverage industry.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

Enter Statement Here

The Board received public comment from the Virginia Beer Wholesalers Association, Inc, which indicated it did not oppose the proposed amendments, and the Virginia Hospitality and Travel Association, which indicated support for the concept of the proposed amendments. Anheuser-Busch, Inc. commented in favor of the increase of the allowed wholesale value of novelty and specialty items.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Enter Statement Here

The Board has examined the regulation and relevant public comments, and has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Enter Statement Here

The Board will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated on May 1, 2003. The goals of this regulation are:
To maintain reasonable controls on the sales and promotion of alcoholic beverages in the Commonwealth by wholesalers and manufacturers through a permit procedure for solicitor salesmen and mixed beverage solicitors; and
To require manufacturer and wholesale licensees of the Board to maintain sufficient records of purchases and sales of alcoholic beverages to ensure regulatory compliance and excise tax collection without unreasonable burden.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory change will have no impact on families.